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July 3, 2014

Via ECF

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Via EMAIL

The Honorable James P. O'Hara
United States District Court for the District of Kansas
500 State Avenue, Suite 517
Kansas City, KS 66101

Re: *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.) and related actions

Dear Judges Cote and O'Hara:

I write to advise the Court of the status of its Orders regarding indispensable parties. As explained below, no defendant has provided NCUA with any information that NCUA has failed to join an indispensable party in these cases by the Court-ordered deadline of July 1, 2014.

On June 2, 2014, Judge Cote issued an order noting that several defendants had pleaded an affirmative defense relating to indispensable parties, and ordering "any party may show cause by June 13, 2014 why this Court should not set a deadline of July 11, 2014 to join other parties in these actions." *NCUA v. Morgan Stanley, et al.*, No. 13-cv-6705-DLC, ECF No. 148. On June 6, 2014, Judge O'Hara adopted this Order for the related cases in Kansas.

Pursuant to the parties' submissions on June 13, 2014, the Court issued Orders on June 16 and 17, 2014 requiring Defendants to "disclose to NCUA by July 1, 2014, the identity of any party it contends is indispensable, and the reasons for that contention." *Id.*, ECF No. 156 (emphasis added). The Orders set further deadlines following such disclosures, including the date for NCUA to amend its pleadings to join any indispensable parties, and a briefing schedule for motions to dismiss based on NCUA's failure to join an indispensable party. The Orders also made clear that "a defendant is precluded after August 15, 2014 from asserting as an affirmative defense that NCUA has failed to join an indispensable party unless the defendant can demonstrate that such defense is based on

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subsequently acquired information, in which case a defendant must promptly advise NCUA accordingly.” *Id.*

On June 20, 2014, the defendants in the *RBS* action moved for another stay of proceedings in the District of Kansas. *NCUA v. RBS, et al.*, No. 11-cv-2340-JWL-JPO, ECF No. 370. In support of that motion, the defendants cited the burden of complying with the Courts’ Orders requiring disclosures related to indispensable parties. *Id.* at 5.

No Defendant made any disclosure related to “the identity of any party it contends is indispensable” by July 1, 2014. Accordingly, NCUA respectfully suggests that the other deadlines contained in the Orders have become moot.

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Respectfully submitted,

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cc: Counsel of Record (via ECF or Email)